NO. 84-1360

IN THE

SUPREME COURT

OF THE
UNITED STATES

OCTOBER TERM 1984

THE CITY OF RENTON, et al.

Appellants,

v.

PLAYTIME THEATRES, INC.,
a Washington corporation, et al.

Appellees.

On Appeal from the United States
Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE WASHINGTON AND UTAH ATTORNEYS GENERAL IN SUPPORT OF APPELLANTS

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INTEREST OF AMICI CURIAE

The interest of the Washington and Utah State Attorneys General Offices is to be of assistance to this Court in establishing the legal parameters within

which small and large cities alike may adopt zoning ordinances dealing with adult movie theaters. Other cities in Washington similar in size to Renton, are currently studying the issue with the intent to enact an ordinance.

While this Court addressed a number of the relevant issues in Young, there remains a need to further clarify and address the issues presented by this case so as to provide necessary guidance to these, and other cities across the country. Accordingly, the Attorneys General, as amici, here support the appeal of the City of Renton.

SUMMARY OF ARGUMENT

In enacting the questioned zoning ordinance, the City of Renton properly relied on (1) the experience of other cities and (2) the legal precedent of

this Court and of the Washington State Supreme Court.

The city attempted to responsibly enact a zoning ordinance dealing with adult movie theatres. To avoid the "cycle of decay" experienced by other cities, the city attempted to adopt a preventive ordinance. Its motive was to protect and preserve the "quality of life" in this small residential community.

The effect of such zoning practice on First Amendment rights is limited and incidental. When those rights are balanced against the legitimate concerns of the city the result should be a sustaining of the zoning measure.

ARGUMENT

A City May Appropriately Rely on the Experience of Other Cities in Enacting a Responsible Preventive Zoning Ordinance.

Renton is a small residential community with a population of about 33,340 located immediately adjacent to Seattle, a large metropolitan city. It is comprised of approximately twenty-five downtown blocks. Many Renton residents commute to Seattle and its suburban areas for employment.

In 1981 Renton adopted a zoning ordinance dealing with adult motion picture theatres showing films depicting "specified sexual activities" or "specified anatomical areas." At the time there were no such theatres in Renton. Thus, in an attempt to preserve and protect the "quality of life" in Renton, the city undertook to adopt a

preventive zoning ordinance. Such responsible preventive measures surely have a place in zoning laws.

A city acts responsibly when it studies the issue, holds public hearings, complies with its own procedures for adoption of a zoning ordinance and proceeds with a proper motive. Here the city studied the issue for almost a year, held public hearings and took testimony from concerned citizens as summarized in the ordinance itself. App. 8la. On the face of the ordinance, the city's intent is set forth as follows:

> ". . . to promote the city of Renton's great interest in protecting and preserving the quality of its neighborhoods, commercial districts and the quality of urban life through effective land use planning; . . " App. 8la.

This Court has long recognized the validity of zoning ordinances and has

given due deference to the body enacting the ordinance.

> "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." Euclid v. Ambler Co., 272 U.S. 365, 388 (1926).

The right to protect "quality of life" through zoning may be the most essential function performed by a local government. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), (Marshall, J. dissenting). In Boraas, "quality of life" was said to take into account family values, youth values, the blessing of quiet seclusion and clean air. The zoning ordinance there at issue restricted land use to one-family dwellings. The ordinance was challenged as a violation of First Amendment freedom of association and the constitutional

right of privacy. This Court, however, upheld the ordinance as a legitimate guideline in a land-use project addressed to family needs.

In the instant case, the City of Renton's attempt to protect and preserve its "quality of life" led to its adoption of the instant zoning ordinance before adult theatres moved into the city. In enacting such a preventive ordinance Renton properly relied on the experience of other cities, in particular Seattle.

In 1976 the City of Seattle amended its zoning code following a long period of study and discussion of the problems of adult movie theatres in its residential areas. The goal of the city was to protect and preserve the character and quality of residential life in its neighborhoods through effective land-use

planning.

The Supreme Court of Washington upheld the zoning ordinance. Northend Cinema v. Seattle, 90 Wn.2d 709, 585 P.2d 1153 (1978), cert. denied sub. nom. Apple Theatre, Inc. v. City of Seattle, 441 U.S. 946 (1979). In so doing it recognized that the city's paramount interest in protecting, preserving and improving quality of life was sufficient to justify zoning the location of adult movie theatres to certain areas through land use planning and regulation.

> "At the public hearing Greenwood residents spoke of their concerns regarding the deterioration of residential neighborhoods that accompanies location of adult movie theatres. The concerns expressed were very specific and included the attraction of transients, parking and traffic problems, increased crime, decreasing property values, and interference with parental responsibilities for children."

Id. at 712.

In enacting its ordinance, the Detroit city council in another case heard expert testimony that the location of several adult movie theatres attracted transients, adversely affected property values, caused an increase in crime and encouraged residents and businesses to move elsewhere. Young v. American Mini Theatres, 427 U.S. 50, 55, 71, n. 34 (1976). The experts and the city council relied on the experience of other cities which revealed a "cycle of decay" that had started and "could be expected in Detroit." Id. at 81, n. 4 (Powell, J. concurring) (Emphasis added).

Likewise, the City of Renton, relying upon the experience of Seattle and Detroit and the testimony of many citizens during Renton's own public

meetings, adopted findings similar to the Seattle and Detroit ordinances. Such action hardly required expert testimony. Resort to observation of common sense experience in urban land-use planning would be sufficient to lead a prudent city council to conclude that the proximity of such theatres to family-oriented neighborhoods will cause the degradation of the community which its zoning plan is supposed to prevent.

Why should a small residential city like Renton be forced to experience for itself the lesson already learned by other cities across the country--and particularly the experience of a major city located directly adjacent to it? In Schad, this Court recognized the propriety of relying on such experience. Schad v. Mount Ephraim, 452 U.S. 61, 73

(1981). It is important that city planners be aware of new conditions, new discoveries and the experience of others which cause new concepts of social needs and innovative zoning to address those needs.

In the Euclid zoning case this Court recognized the deference to be accorded those who recognize a specific need and then identify a specific type of zoning ordinance to address the need. Euclid v. Ambler Co., 272 U.S. 365, 388 (1926).

> "A nuisance may be merely a right thing in the wrong place, --like a pig in the parlor instead of the barnyard." Id.

Many years after Euclid, this Court, in referencing this simile, stated that when a city finds the pig has entered the parlor, the exercise of police power does not depend on proof that the pig is obscene. F.C.C. v. Pacifica Foundation,

438 U.S. 726 (1978). So too, small cities should not be required to prove by their own experience, a deterioration in their most precious commodity--"quality of life." Renton can reasonably rely on the experience of cities like Detroit and Seattle. The obvious should not be left unstated here. By virtue of its size in relation to these large cities, Renton has much more to lose. Its responsible preventive measures should be upheld.

"Quality of Life" Concerns of the City and First Amendment Interests of Adult Movie Theatres Should be Balanced in Favor of the City Zoning Ordinance.

Amici are not suggesting deference be given the city in total disregard of First Amendment rights. Concerns of the city and the interests protected in the First Amendment, however, are balanced in favor of Renton's ordinance. The ordinance does not suppress production,

deny business access to the market nor does it, to any significant degree, restrict access to adult theatres. Interference with First Amendment protection is only incidental.

On the other hand, if the zoning ordinance was in effect a total suppression, then the interference with the First Amendment would be substantial. That, however, is not the situation with the Renton ordinance.

At issue is the zoning of businesses exhibiting motion pictures for profit--commercial speech. Such speech is not afforded the full protection provided pure speech conveying a social, political or philosophical message. Commercial speech is entitled to some protection under the First Amendment governed largely by the content of the

communication. Va. Pharmacy Bd. v. Va. Consumer Council, 425 U.S. 748 (1976).

The motive of the City of Renton was not the suppression of free speech but the protection and preservation of the City's "quality of life." App. 81a. That justification is sufficient and should not be subject to attack. Schad, 452 U.S. at 67. Zoning of adult movie theatres by Renton to protect the "quality of life" is valid because it implicates "First Amendment concerns only incidentally and to a limited extent." Young, 427 U.S. at 73. (Powell, J. concurring).

CONCLUSION

The cities of Washington state are like those of many other states. Small communities like Renton jealously guard their residential character. Preventive versus after-the-fact zoning is an appropriate means for cities to use in protecting and preserving possibly their most valuabe resource--"quality of life." As a number of other cities attempt to venture through this course, it is important that they have the guidance of this Court. A reversal of the Ninth Circuit decision would provide cities with the ability, through preventive zoning like Renton's, to

continue to preserve and protect their "quality of life."

Respectfully submitted,

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